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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gastineau, *et al.*

Application No.: 09/536,663

Filed: March 27, 2000

For: **Determining Intra-Day Net Asset Value
Proxy Of An Actively Managed
Exchange Traded Fund**

Confirmation No.: 3493

Art Unit: 3621

Examiner: Daniel L. Greene

Atty. Docket: 00322.0008.NPUS00

Information Disclosure Statement

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GROUP 3600

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Listed on accompanying Form PTO/SB/08a are documents that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached PTO/SB/08a based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not

exist. The Examiner is specifically requested not to rely solely on the material submitted herewith. It is further understood that the Examiner will consider information that had been cited by or submitted to the U.S. Patent and Trademark Office in a prior application relied on under 35 U.S.C. § 120. 1138 OG 37, 38 (May 19, 1992).

Applicants have checked the appropriate boxes below.

- ☒ 1. This Information Disclosure Statement is being filed within three months of the U.S. filing date OR before the mailing date of a first Office Action on the merits or before the mailing of a first Office Action after the filing of a request for continued examination under 37 C.F.R. § 1.114. No statement under 37 C.F.R. § 1.97(e) or fee is required, or
- ☐ 2. This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance, or action that otherwise closes prosecution in the application, and
 - ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
 - ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2), or
 - ☐ c. Attached is our Check No. _____ in the amount of \$180.00 in payment of the fee under 37 C.F.R. § 1.17(p).

- ☐ 3. This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice of Allowance, but on or before payment of the Issue Fee. Attached is our Check No. _____ in the amount of \$ _____ in payment of the fee under 37 C.F.R. § 1.17(i), and
- ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
- ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).
- ☐ 4. Relevance of the non-English language document(s) is discussed in the present specification.
- ☐ 5. The document(s) was/were cited in a corresponding foreign application. An English language version of the foreign search report is attached for the Examiner's information.
- ☐ 6. A concise explanation of the relevance of the non-English language document(s) appears below:
- ☒ 7. The Examiner's attention is directed to co-pending U.S. Patent Application No. 09/815,589, filed March 23, 2001, U.S. Patent Application No. 10/174,505, filed June 17, 2002, U.S. Patent Application No. 10/123,779, filed April 16, 2002, U.S. and U.S. Patent Application No. 09/536,258, filed March 27, 2000, and U.S. Patent Application filed January 8, 2004, Attorney Docket No.

00322.0006.CNUS01, entitled "Systems and Methods for Trading Actively Managed Funds," which are directed to related technical subject matter. The identification of these U.S. Patent Applications is not to be construed as a waiver of confidentiality as to those applications now or upon issuance of the present application as a patent.

- ☐ 8. Copies of the documents were cited by or submitted to the Office in Application No. _____, filed _____, which is relied upon for an earlier filing date under 35 U.S.C. § 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 08-3038 referencing docket number : 00322.0008.NPUS00.

Respectfully submitted,



Michael J. Stimson (Reg. No. 45,429)
Andrew R. Sommer (Reg. No. 53,932)

Date: March 18, 2004

HOWREY SIMON ARNOLD & WHITE, LLP
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March 18, 2004

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P.O. Box 1450
Alexandria, VA 22313-1450

Re: U.S. Non-Provisional Patent Application No. 09/536,663
Filed: March 27, 2000 *Confirmation No. 3493*
For: **Determining Intra-Day Net Asset Value Proxy of
an Actively Managed Exchange Traded Fund**
Inventors: Gary L. GASTINEAU, *et al.*
Our Ref: 00322.0008.NPUS00

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MAR 23 2004
GROUP 3600

Sir:

Applicant submits the following documents for appropriate action by the U.S. Patent and Trademark Office:

1. Information Disclosure Statement (4 pages);
2. PTO Form SB/08a (2 pages) with 4 attached references; and
3. Return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to **Deposit Account No. 08-3038**. If extensions of time under 37 C.F.R. § 1.136 other than those otherwise provided for herewith are required to prevent abandonment of the present patent application, then such extensions of time are hereby

Commissioner for Patents
March 18, 2004
Page 2

petitioned, and any fees therefore are hereby authorized to be charged to our Deposit Account No. 08-3038, referencing the above docket number. *A duplicate copy of this letter is enclosed.*

Respectfully submitted,



Michael J. Stimson (Reg. No. 45,429)
Andrew R. Sommer (Reg. No. 53,932)

Enclosures